IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 28TH NOVEMBER 2007 / 7TH AGRAHAYANA 1929

WP(C).No. 34786 of 2007(N)

EA 227/07 in EP 26/07 in OS.99/2004 of MUNSIFF COURT,MUVATTUPUZHA

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PETITIONER: CLAIM PETITIONER

DEVASSIA, AGED 56 YEARS, S/O.OUSEPH,
PALLIMOLAYIL HOUSE, PUTHUPPADI KARA,
KOTHAMANGALAM VILLAGE.

BY ADV. SRI.PEEYUS A.KOTTAM

RESPONDENTS: PLAINTIFF & DEFENDANTS

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1. BABU ABRAHAM, AGED 60 YEARS,
S/O.ABRAHAM, POOKKUNNEL HOUSE,
PUTHUPPADI KARA, KOTHAMANGALAM VILLAGE.

2. KUNJAPPAN, AGED 47 YEARS, S/O.OUSEPH, PALLIMOLAYIL HOUSE, PUTHUPPADI KARA, KOTHAMANGALAM VILLAGE.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.34786 of 2007

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Dated this the 28th day of November, 2007.

JUDGMENT

This Writ Petition is filed whereby an application for issuance of a Commission by the claimant is dismissed by the court below. E.P.No.26 of 2007 is filed for execution of the decree in O.S.No.99 of 2004. The present writ petitioner has filed a claim petition before the court below. According to him, the second respondent in his E.A. is his brother and he had obtained 10 cents of property as per document No.888 of 1990. It is also averred that the property was described as lying in Sy.No.1541/5 whereas the property is really situated in Sy.No.1541/4. A correction deed was executed as document No.2516 of 2006 or in other words, now the case of the claimant is that he is having right over 10 cents of property comprised in Sy.No.1541/4. The first respondent in the E.A. is the plaintiff in the suit and the decree schedule property is comprised in

Sy.No.1541/2 of Kothamangalam Village, which is included in deed No.2913 of 1989. So, as per the contentions of the parties, the plaintiff is entitled to the property only in Sy.No.1541/2 and the claimant claims right over the property under Sy.No.1541/4.

2. The court has issued a Commission for fixation of boundary. So since the plaint schedule property is comprised in Sy.No.1541/2 only the boundary of that has to be fixed. If the property covered by Sy.No.1541/4 is taken by the decree schedule, then naturally the claimant may have a case that his property is attempted to be tampered with. I am referring to this matter merely for the purpose of disposing of the Commission application. Since there is a Commission report in the suit and as the plaintiff has not claimed any right over the property comprised in Sy.No.1541/4, the question of fixation of boundary covered by Sy.No.1541/4 may not raise at all in the case. Therefore, issuance of a Commission is not necessary at this stage. At the same time, the claimant is permitted to adduce evidence and if he is able to prove that the attempt of fixation of boundary encroaches in the property covered by the document claimed by him or as contended by him, the court may conduct

an enquiry on that and dispose of the matter in accordance with law.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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